

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 484

Introduced by Assembly Member Eng

February 24, 2009

An act to amend Sections 31 and 7145.5 of the Business and Professions Code, and to add Sections 19265 and 19571 to the Revenue and Taxation Code, relating to taxes.

LEGISLATIVE COUNSEL'S DIGEST

AB 484, as amended, Eng. Franchise Tax Board: professional or occupational licenses.

The Personal Income Tax Law and the Bank and Corporation Tax Law impose taxes on, or measured by, income. Existing law allows a tax return or return information filed under those laws to be disclosed in a judicial or administrative proceeding pertaining to tax administration under certain circumstances. Existing law requires every board, as defined under the Business and Professions Code, and the Department of Insurance to, upon request of the Franchise Tax Board, furnish to the Franchise Tax Board certain information with respect to every licensee. *Existing law authorizes many of these boards to impose fees on its licensees to cover its costs in administering its respective provisions and in some cases these funds are deposited into continuously appropriated funds.*

This bill would require a state governmental licensing entity, as defined, issuing professional or occupational licenses, certificates, registrations, or permits to provide to the Franchise Tax Board the name and social security number or federal taxpayer identification number of each individual licensee of that entity. The bill would require the

Franchise Tax Board, if ~~an individual~~ a licensee fails to pay taxes for which a notice of state tax lien has been recorded, as specified, to ~~send~~ *mail* a preliminary notice of suspension to the licensee. The bill would provide that the license of a licensee who fails to satisfy the unpaid taxes by a certain date shall be automatically suspended, except as specified, would require the Franchise Tax Board to ~~mail~~ *provide* a notice of suspension to the applicable state governmental licensing entity and to *mail a notice of suspension* to the licensee, and would provide that the suspension be canceled upon compliance with the tax obligation. The bill would require the Franchise Tax Board to meet certain requirements and would make related changes. *The bill would authorize a state governmental licensing entity, as specified, to impose a fee on a licensee with a suspended license in an amount necessary to cover its administrative costs.* The bill would make implementation of its provisions contingent upon appropriation of funds for that purpose in the annual Budget Act.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 31 of the Business and Professions Code
2 is amended to read:
3 31. (a) As used in this section, “board” means any entity listed
4 in Section 101, the entities referred to in Sections 1000 and 3600,
5 the State Bar, the Department of Real Estate, and any other state
6 agency that issues a license, certificate, or registration authorizing
7 a person to engage in a business or profession.
8 (b) Each applicant for the issuance or renewal of a license,
9 certificate, registration, or other means to engage in a business or
10 profession regulated by a board who is not in compliance with a
11 judgment or order for support shall be subject to Section 17520 of
12 the Family Code.
13 (c) “Compliance with a judgment or order for support,” has the
14 meaning given in paragraph (4) of subdivision (a) of Section 17520
15 of the Family Code.
16 (d) Each licensee who has not paid any applicable state income
17 tax, including interest, penalties, and other fees, shall be subject
18 to Section 19265 of the Revenue and Taxation Code.

1 SEC. 2. Section 7145.5 of the Business and Professions Code
2 is amended to read:

3 7145.5. (a) The registrar may refuse to issue, reinstate,
4 reactivate, or renew a license or may suspend a license for the
5 failure of a licensee to resolve all outstanding final liabilities, which
6 include taxes, additions to tax, penalties, interest, and any fees that
7 may be assessed by the board, the Department of Industrial
8 Relations, the Employment Development Department, or the
9 Franchise Tax Board.

10 (1) Until the debts covered by this section are satisfied, the
11 qualifying person and any other personnel of record named on a
12 license that has been suspended under this section shall be
13 prohibited from serving in any capacity that is subject to licensure
14 under this chapter, but shall be permitted to act in the capacity of
15 a nonsupervising bona fide employee.

16 (2) The license of any other renewable licensed entity with any
17 of the same personnel of record that have been assessed an
18 outstanding liability covered by this section shall be suspended
19 until the debt has been satisfied or until the same personnel of
20 record disassociate themselves from the renewable licensed entity.

21 (b) The refusal to issue a license or the suspension of a license
22 as provided by this section shall be applicable only if the registrar
23 has mailed a notice preliminary to the refusal or suspension that
24 indicates that the license will be refused or suspended by a date
25 certain. This preliminary notice shall be mailed to the licensee at
26 least 60 days before the date certain.

27 (c) (1) In the case of outstanding final liabilities assessed by
28 the Franchise Tax Board, this section shall be operative within 60
29 days after the Contractors' State License Board has provided the
30 Franchise Tax Board with the information required under Section
31 30, relating to licensing information that includes the federal
32 employee identification number or social security number.

33 (2) All versions of the application for contractors' licenses shall
34 include, as part of the application, an authorization by the applicant,
35 in the form and manner mutually agreeable to the Franchise Tax
36 Board and the board, for the Franchise Tax Board to disclose the
37 tax information that is required for the registrar to administer this
38 section. The Franchise Tax Board may from time to time audit
39 these authorizations.

(d) This section shall not be interpreted to conflict with the suspension of a license pursuant to Section 19265 of the Revenue and Taxation Code.

SEC. 3. Section 19265 is added to the Revenue and Taxation Code, to read:

19265. (a) (1) ~~All state~~ (A) State governmental licensing entities ~~issuing professional or occupational licenses, certificates, registrations, or permits~~ entities, as defined in paragraph (4) of subdivision (e), shall provide to the Franchise Tax Board the name and social security number or federal taxpayer identification number, as applicable, of each licensee of that state governmental licensing entity.

(B) State governmental licensing entities shall provide to the Franchise Tax Board the information described in subparagraph (A) at a time that the Franchise Tax Board may require.

(2) If any licensee has failed to pay taxes, including any penalties, interest, and any applicable fees, imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, for which a notice of state tax lien has been recorded in any county recorder's office in this state, pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, the Franchise Tax Board shall mail a preliminary notice of suspension to the licensee indicating that the license will be suspended by a date certain, which shall be ~~at least~~ *no earlier than* 60 days after the mailing of the preliminary notice *of suspension*, unless prior to the date certain the licensee pays the unpaid taxes or enters into an installment payment agreement, as described in Section 19008, to satisfy the unpaid taxes. The preliminary notice *of suspension* shall also advise the licensee of the opportunity to request deferral or cancellation of a suspension pursuant to subdivision (b).

(3) If any licensee subject to paragraph (2) fails to pay the unpaid taxes or to enter into an installment payment agreement, as described in Section 19008, to satisfy the unpaid taxes prior to the date certain ~~listed~~ *provided* in the preliminary notice of suspension, his or her license shall be automatically suspended by operation of this section, except as provided in subdivision (b), and the Franchise Tax Board shall ~~mail~~ *provide* a notice of suspension to the applicable state governmental licensing entity and *shall mail a notice of suspension* to the licensee. The rights, powers, and

1 privileges of any licensee whose ~~professional or occupational~~
2 ~~license, certificate, registration, or permit~~ *license* has been
3 suspended pursuant to this section shall be subject to the same
4 prohibitions, limitations, and restrictions as if the ~~professional or~~
5 ~~occupational license, certificate, registration, or permit~~ *license*
6 were suspended by the state governmental licensing entity that
7 issued the ~~professional or occupational license, certificate,~~
8 ~~registration, or permit.~~ *the license.*

9 (4) Upon compliance by the licensee with the tax obligation,
10 either by payment of the unpaid taxes or entry into an installment
11 payment agreement, as described in Section 19008, to satisfy the
12 unpaid taxes, a suspension pursuant to this subdivision shall be
13 canceled. The Franchise Tax Board shall, within 10 business days
14 of compliance by the licensee with the tax obligation, ~~notify both~~
15 *provide a notice of cancellation to the state governmental licensing*
16 *entity and the licensee mail a notice of cancellation to the licensee*
17 *indicating that the unpaid taxes have been paid or that an*
18 *installment payment agreement, as described in Section 19008,*
19 *has been entered into to satisfy the unpaid taxes and that the*
20 *suspension has been canceled.*

21 ~~(5) State governmental licensing entities shall provide to the~~
22 ~~Franchise Tax Board the information required by this subdivision~~
23 ~~at a time that the Franchise Tax Board may require.~~

24 (5) *If a license is not suspended, or if the suspension of a license*
25 *is canceled, based on the licensee entering into an installment*
26 *payment agreement as described in Section 19008, and the licensee*
27 *fails to comply with the terms of the installment payment*
28 *agreement, that license shall be suspended as of the date that is*
29 *30 days after the date of termination of that installment payment*
30 *agreement. If a license is suspended pursuant to this paragraph,*
31 *the Franchise Tax Board shall provide notice of suspension to the*
32 *applicable state governmental licensing entity and mail a notice*
33 *of suspension to the licensee.*

34 (b) (1) The Franchise Tax Board may defer or cancel any
35 suspension authorized by this section if a licensee would experience
36 financial hardship. The Franchise Tax Board shall, if requested by
37 the licensee in writing, provide for an administrative hearing to
38 determine if the licensee ~~will~~ *would* experience financial hardship
39 from the suspension of the ~~license, certificate, registration, or~~
40 ~~permit~~ *his or her license.*

1 (2) The request for a hearing specified in paragraph (1) shall be
2 made in writing within ~~60~~ 30 days from the mailing date of the
3 preliminary notice described in subdivision (a).

4 (3) The Franchise Tax Board shall conduct a hearing within 30
5 days after receipt of a request pursuant to paragraph (1), unless
6 the ~~board~~ Franchise Tax Board postpones the hearing, upon a
7 showing of good cause by the licensee, in which case a suspension
8 pursuant to subdivision (a) shall be deferred until the hearing has
9 been completed.

10 (4) A licensee seeking relief under this subdivision shall only
11 be entitled to relief described in paragraph (1) if the licensee
12 provides the Franchise Tax Board with financial documents that
13 substantiate a financial hardship, and agrees to an ~~acceptable~~
14 installment payment arrangement.

15 (5) *If the deferral of a suspension of a license under this*
16 *subdivision is no longer operative, that license shall be suspended*
17 *as of the date that is 30 days after the date the deferral is no longer*
18 *operative. If a license is suspended pursuant to this paragraph,*
19 *the Franchise Tax Board shall provide notice of suspension to the*
20 *applicable state governmental licensing entity and mail a notice*
21 *of suspension to the licensee.*

22 (c) *Notwithstanding any other provision of law, a state*
23 *governmental licensing entity may, with the approval of the*
24 *appropriate department director or governing body, impose a fee*
25 *on licensees whose license has been suspended as described in*
26 *subdivision (a). The fee shall not exceed the amount necessary for*
27 *the licensing entity to cover its costs in carrying out the provisions*
28 *of this section. Fees imposed pursuant to this section shall be*
29 *deposited in the fund in which other fees imposed by the state*
30 *governmental licensing entity are deposited and shall be available*
31 *to that entity upon appropriation in the annual Budget Act.*

32 (d) *The process described in subdivision (b) shall constitute the*
33 *sole administrative remedy for contesting the suspension of a*
34 *license under this section. The procedures in the administrative*
35 *adjudication provisions of the Administrative Procedure Act*
36 *(Chapter 4.5 (commencing with Section 11400) and Chapter 5*
37 *(commencing with Section 11500) of Part 1 of Division 3 of Title*
38 *2 of the Government Code) shall not apply to the suspension of a*
39 *license pursuant to this section.*

40 (e)

(e) For purposes of this section and Section 19571, the following definitions shall apply:

(1) “Financial hardship” means financial hardship within the meaning of Section 19008, as determined by the Franchise Tax Board, where suspension of a license will result in the licensee being financially unable to pay any part of the amount described in subdivision (a) and the licensee is unable to qualify for an installment payment arrangement as provided for by Section 19008.

In order to establish the existence of a financial hardship, the licensee shall submit any information, including information related to reasonable business and personal expenses, requested by the Franchise Tax Board for the purpose of making that determination.

(2) “License” includes a certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(3) “Licensee” means an individual authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(4) “State governmental licensing entity” means any entity listed in Section 101, 1000, or 19420 of the Business and Professions Code, the office of the Attorney General, the Department of Insurance, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a ~~license, certificate, or registration~~ *license* authorizing an individual to engage in a profession or occupation. “State governmental licensing entity” shall not include the Department of Motor Vehicles.

(d)

(f) Implementation of this section shall be contingent on the appropriation of funds for the purposes of this section in the annual Budget Act.

SEC. 4. Section 19571 is added to the Revenue and Taxation Code, to read:

19571. (a) The Franchise Tax Board may disclose to state governmental licensing entities information regarding suspension of a license pursuant to Section 19265.

(b) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any

1 information obtained from the Franchise Tax Board, pursuant to
2 this section, except to inform the public of the suspension of a
3 license pursuant to Section 19265.

4 (c) For purposes of this section, the definitions in Section 19265
5 shall apply.

6 SEC. 5. The Legislature hereby finds and declares the
7 following:

8 (a) It is the intent of the Legislature that, consistent with the
9 decision in *Gallo v. United States District Court* (9th Cir. 2003)
10 349 F.3d 1169, cert. den. (2004) 541 U.S. 1073, the suspension of
11 a professional or occupational license pursuant to this act for failure
12 to pay delinquent taxes is a legislative act, for which due process
13 is satisfied by the legislative notice and hearing procedures.

14 (b) To prevent financial hardship, Section 19265 of the Revenue
15 and Taxation Code, as added by this act, grants a delinquent
16 taxpayer the opportunity for an additional hearing for financial
17 hardship prior to the suspension of a professional or occupational
18 license.

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21 CORRECTIONS:

22 Text—Pages 5, 6, and 7.
23